

§ 275.203(b)(3)–2

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from that definition by either section 3(c)(1) or section 3(c)(7) of such Act (15 U.S.C. 80a–3(c)(1) or (7));

(ii) That permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests; and

(iii) Interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser.

(2) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it permits its owners to redeem their ownership interests within two years of the purchase of such interests only in the case of:

(i) Events you find after reasonable inquiry to be extraordinary; and

(ii) Interests acquired through reinvestment of distributed capital gains or income.

(3) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it has its principal office and place of business outside the United States, makes a public offering of its securities in a country other than the United States, and is regulated as a public investment company under the laws of the country other than the United States.

[69 FR 72087, Dec. 10, 2004]

§ 275.203(b)(3)–2 Methods for counting clients in certain private funds.

(a) For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), you must count as clients the shareholders, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”) of a private fund as defined in paragraph (d) of section 275.203(b)(3)–1, unless such owner is your advisory firm or a person described in paragraph (d)(1)(iii) of section 275.205–3.

(b) If you provide investment advisory services to a private fund in which an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64) is, directly or indirectly, an owner, you must count the owners of that investment company as clients for purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)).

(c) If you have your principal office and place of business outside the

United States, you may treat a private fund that is organized or incorporated under the laws of a country other than the United States as your client for all purposes under the Act, other than sections 203, 204, 206(1) and 206(2) (15 U.S.C. 80b–3, 80b–4, 80b–6(1) and (2)).

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§ 275.203A–1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration—(1) Threshold for SEC registration—\$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least \$30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1).

(2) *Exemption for investment advisers having between \$25 and \$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least \$25,000,000 but less than \$30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64); or

(ii) You are eligible for an exemption described in § 275.203A–2 of this chapter.

NOTE TO PARAGRAPHS (a)(1) AND (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between \$25 and \$30 million of assets under management.

(b) *Switching to or from SEC registration—(1) State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating